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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/527,300

03/09/2005

Stephen Alfred Miranda

IPL-1US

2549

30901

7590

05/12/2009

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EXAMINER

FAULK, DEVONA E

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/527,300	Applicant(s) MIRANDA, STEPHEN ALFRED	
	Examiner DEVONA E. FAULK	Art Unit 2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) 5-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/9/05 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicant's election without traverse of Group 1, claims 1-4 in the reply filed on 4/19/09 is acknowledged.

Information Disclosure Statement

1. The information disclosure statement filed 3/8/09 and 4/30/07 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. The office did not receive a copy of JP 64-071399 and WIPO 2004/013977. Also there was no English abstract provided for CN 86108791A and CN 2070556U. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Objections

1. Claim 3 is objected to because of the following informalities: Claim 3 recites "...in which both the vibration conduction microphone and the speaker enclosure are waterproof". The specification teaches of a speaker enclosure that is waterproof but not microphone (See page 7, lines 5-28). Appropriate correction is required.

Specification

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 3 recites "...in which both the vibration conduction

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microphone and the speaker enclosure are waterproof". The specification teaches of a speaker enclosure that is waterproof but not microphone (See page 7, lines 5-28). The specification lacks antecedent basis for the vibration conduction microphone being waterproof.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-3 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 recites that " when the support structure is fastened to the safety helmet, ...the speaker enclosure come into contact with a rear of a wearer's head..". The examiner asserts that Figure 9 indicates that the speaker enclosure is coming in contact with the side of the user's head but near the rear. Additionally, it does not make sense to have the speaker at the rear of the user's head. This would impede the user's ability to hear and understand what was being spoken. It is not clear to the examiner what is meant by rear. Does the applicant really mean side of the user's head? Clarity is needed. The examiner has interpreted this as the case.

Specification

- 3.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1,2 and 4 are rejected under 35 U.S.C. 102(b) as being anticipated by Locarno et al. (US 6,298,249).

Regarding claim 1, Locarno discloses a communication apparatus (Figures 1-6) including:

a support structure that is fastenable to a safety helmet (nape device 12; column 3, lines 36-43);

a vibration conduction microphone that is carried by the support structure (bone microphone 18, Figure 1; column 3, lines 39-43); and

a speaker enclosure (speaker 20, Figure 1; column 3, lines 40-46) that is also carried by the support structure, the vibration conduction microphone and the speaker enclosure being positioned so that, when the support structure is fastened to the safety helmet, the vibration conduction microphone and the speaker enclosure come into contact with a side of a wearer's head, in use.

All elements of claim 2 are comprehended by the rejection of claim 1.

Claim 4 is rejected using Locarno as applied above to claim 1 (helmet 10, Figure 1; column 3, lines 35-38; all other features are as shown in rejection of claim 1).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Locarno et al. (US 6,298,249).

Locarno fails to teach that the vibration conduction microphone and the speaker enclosure are waterproof. The examiner takes official notice that waterproof housings are well known in the art. It would have been obvious to modify Locarno so that the microphone and speaker enclosure are waterproof so that the speaker and microphone can be protected from the elements.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DEVONA E. FAULK whose telephone number is (571)272-7515. The examiner can normally be reached on 8 am - 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devona E. Faulk/
Examiner, Art Unit 2614